

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1327 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMADBHAI GAFURBHAI UPAD

Versus

KHATUNBEN D/O RASULBHAI UMARBHAI

Appearance:

MR RN SHAH for Petitioner

MR HB SHAH for Respondent No. 1

MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/06/98

ORAL JUDGEMENT

This application arises out of maintenance proceedings taken out by the respondent no.1. The respondent no.1 filed Criminal Misc. Application No. 122/84 in the court of the learned JMFC, Modasa, against the present petitioner under section 125 of the Criminal Procedure Code. The respondent no.1 claimed that she was

married to the petitioner no.1 22 years ago and that son Salim was born during the said wedlock. However, after some time the accused drew her and her son out of the house and married with one Iayeshaben some 17 years ago. The respondent no.1 claimed that since she was deserted by the petitioner, she and her son were residing with her father. She further averred that her father being an old man was unable to maintain the respondent no.1 and her son and she, therefore, claimed maintenance from the petitioner. She claimed that the petitioner had a motor garage and also had some agricultural land; that he was an affluent man. The application was contested by the petitioner. He denied that he owned a motor garage or agricultural land. He contended that the respondent had left him voluntarily and that the son had become major and was earning. He also contended that he had six children by his second wife and he was doing petty labour work and he is maintaining his wife and six children with great difficulty.

The learned trial Judge under his judgment and order dated 30th December, 1985, recorded the finding that the petitioner had failed to maintain the wife and the minor son and that the respondent no.1 was entitled to maintenance from the petitioner. He also recorded the finding that the son had become major and he was earning and therefore he was not entitled to maintenance from the petitioner. It was also observed that the petitioner had failed to lead any evidence to establish the income earned by him. The court, therefore, believed that the petitioner was earning Rs.2500/- per month. Considering his other liabilities, the court awarded monthly maintenance of Rs.200/- to the respondent no.1. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 7/86 before the learned Additional Sessions Judge, Himatnagar, which was rejected under the judgment and order dated 31st March, 1986. Feeling aggrieved, the petitioner has preferred the present Revision Application.

I have perused the impugned judgments and the orders passed by the learned trial Judge and the learned Additional Sessions Judge. I do not find any reason to interfere with the orders made by the learned trial Judge and confirmed by the learned Additional Sessions Judge.

Petition is, therefore, dismissed. Rule is discharged.

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JOSHI